IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Marymurti & Ors. Vs. State of Rajasthan

**S.B.CR.REVISION PETITION NO.785/2002**

against the order dt.28.8.2002 passed by Additional Sessions Judge (Fast Track), Pali in Sessions Case No.32/2202

DATE OF ORDER :: July 21, 2006

**PRESENT**

**HON'BLE MR.H.R.PANWAR,J.**

Mr.N.S.Charan, for the petitioners.

Mr.Ashok Upadhyaya, P.P. for the State.

**BY THE COURT:**

This criminal revision petition under section 397/401 Cr.P.C. is directed against the order dt. 28.8.2002 passed by Additional Sessions Judge (Fast Track), Pali (for short 'the trial court' hereinafter) in Sessions Case No.32/2002, whereby the trial court framed the charges against the petitioners and co-accused Bala Murugan for the offences under sections 120-B, 395 I.P.C. and in alternative section 412 I.P.C. Aggrieved by the order impugned framing charges, the petitioners have filed the

instant revision petition.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully perused the order impugned framing charges as also the record of the trial court.

It is contended by learned counsel for the petitioners that essential ingredients for the offence under section 395 I.P.C. are not made out and, therefore, at best if any charge can be framed, it can be the charge under section 379 I.P.C. against Bala Murugan and none else. Learned Public Prosecutor supported the order impugned.

On careful perusal of the record, it appears that complainant Devi Singh having a bag containing a sum of Rs.1,66,500/- went to take water at Mastan Baba at that time, co-accused Bala Murugan snatched the bag containing cash and thereafter Bala Murugan and the present petitioners ran away in a jeep bearing No.RJ-19-T-0025. On a prompt report having been lodged by the complainant, Police had a "Nakabandi" and during the "Nakabandi", the said jeep was intercepted by the police and the petitioners and Co-accused Bala Murugan were found occupants of the jeep. On being interrogated, it was found that a conspiracy was hatched and the petitioners and co-accued

Bala Murugan committed dacoity for a sum of Rs.1,66,500/-, they were arrested. Each of them voluntarily furnished information under section 27 of the Indian Evidence Act and in pursuance of their information, a sum of Rs.15,000/- was recovered from each of the petitioners and a sum of Rs.46,500/- from co-accused Bala Murugan. From the material placed before the trial court by the police, prima facie there is an evidence that petitioners and co-accused Bala Murugan have committed similar type of offence by a particular design; there was a preplan that soon after the dacoity by co-accused Bala Murugan, if he is caught hold by the public, the others would come to save him and if he succeeds in committing dacoity, the others join and the amount looted by them is distributed amongst them in proportionate shares.

At the time of framing charge, the court is required to see whether from the material placed before it, whether there is prima facie case or ground to presume that the accused have committed the offence. If the court presumes that the accused have committed offence, the court is obliged to frame the charge. In my view, the trial court on the basis of material placed on record rightly came to the conclusion that there is a ground to presume that the petitioners have committed the offence apart from the other co-accused viz. Bala Murugan. At

the stage of framing charge, the evidence is required to be examined meticulously.

In State of Bihar Vs. Ramesh Singh, **(1977) 4 SCC 39**, the Hon'ble Supreme Court, while considering the provisions of Sections 227 and 228 as also Section 401 of the Code, held as under:-

> "Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that

> the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

In State of Maharashtra Vs. Som Nath Thapa & Anr., **(1996) 4 SCC 659**, the Hon'ble Supreme Court held that if on the basis of material on record, a court could prima facie conclude that commission of the offence is a probable consequence, a case for framing of charges exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the material on record need not be gone into; the material brought on record by the prosecution has to be accepted as true at that stage.

In State of Delhi Vs. Gyan Devi & ors., **JT 2000 (Suppl.2) SC 635**, the Hon'ble Supreme Court held that at the stage of framing of charge, the trial court is not to examine and assess in detail the material placed on record by prosecution nor it is for the court to consider the sufficiency of the material to establish the offence alleged against the accused persons. The Court further held that at the stage of framing the charge, the court is

to examine the material only with a view to be satisfied that prima facie a case of commission of offence alleged is made out against the accused. It was further held by the Hon'ble Apex Court that the High Court's power to quash the charge should not be exercised except for strong reasons like interest of justice and avoiding abuse of process of the Court.

In State of Maharashtra Vs. Priya Sharan Maharaj & ors., **(1997) 4 SCC 393,** the Hon'ble Supreme Court held that at the stage of framing the charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. It was further held by Their Lordships that at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

In State of Orissa Vs. Debendra Nath Padhi, JT **2004 (10) SC 303**, a Three Judge Bench of the Hon'ble Supreme Court held that at the time of framing the charge or taking cognizance, the

accused has no right to produce any material. The Apex Court further observed that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:-

> "At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

In the instant case, so far as essential ingredients for the offence under section 395 I.P.C. is concerned, here is a case where a criminal conspiracy hatched by the petitioners and co-accused Bala Murguan as while Bala Murugan was snatching the bag from the complainant containing a sum of Rs.1,66,500/-, the petitioners were standing by the side with intent to save him if he is caught hold by the public and if he succeeds, the amount looted by them would be distributed amongst them. In the

circumstances, therefore, it cannot be said that the offence was committed only by co-accused Bala Murgan but it was committed by the petitioners also by hatching criminal conspiracy and, therefore, it cannot be said that the essential ingredients for the offence under section 395 I.P.C. are missing. In the circumstances, therefore, no case for interference is made out.

Consequently, the revision petition is dismissed. Record of the trial court be returned forthwith.

**[H.R.PANWAR],J.**

**m.asif/-**